

**MASSACHUSETTS DEPARTMENT OF REVENUE**  
**SALES AND USE TAX**  
**UNREGISTERED OUT-OF-STATE VENDOR;**  
**LOCAL AGENT OR REPRESENTATIVE**

**FACTS:**

Cabco Co., an out-of-state manufacturer, makes widgets. Cabco has salesmen and representatives in Massachusetts who act as local distributors; Cabco also fills orders for Massachusetts customers directly. Cabco is not registered as a Massachusetts vendor.

Deacon Co. is registered as a Massachusetts vendor. Deacon is one of Cabco's local representatives and solicits orders for Cabco in Massachusetts. When a customer places an order, Deacon sends it and a deposit to Cabco's headquarters for acceptance. When the customer pays Deacon the balance of the purchase price, Deacon forwards it to Cabco; Cabco then ships the product directly to the customer. Deacon never takes title to, nor possession of the goods but is paid a commission once a transaction is completed.

**ISSUE:**

Must Deacon collect a Massachusetts sales or use tax on the sale of the products it distributes for Cabco in Massachusetts?

**DISCUSSION:** Massachusetts imposes an excise upon sales at retail of tangible personal property by any vendor. G.L. c. 64H, § 2. Massachusetts also imposes a complementary use tax on the storage, use or other consumption in the Commonwealth of tangible personal property purchased from a vendor for storage, use or other consumption here. G.L. c. 64I, § 2. These taxes together are designed to tax any non-exempt transaction in which property is sold for use here, whether or not the sale takes place within the Commonwealth. *Towle v. Commissioner of Revenue*, 397 Mass. 599, 604 (1986).

Every vendor engaged in business in the Commonwealth must add the sales tax to the sales price of property he sells and must collect the tax from the purchaser. G.L. c. 64H, § 3. In addition, every vendor engaged in business here selling tangible personal property for storage, use or other consumption here must, when a sale is made, either collect the tax or, if the tax cannot then be collected, collect the use tax when the use becomes taxable. G.L. c. 64I, § 4.

A "vendor" is a retailer or other person selling tangible personal property of a kind the gross receipts from the retail sales of which are required to be included in the measure of the sales tax. G.L. c. 64H, § 1(18); G.L. c. 64I, § 1(1). Cabco is a vendor engaged in business in the Commonwealth and should be collecting the sales tax on products it sells. Deacon, however, is also a vendor, and is a retailer with respect to Cabco's products since a retailer is every salesman, representative or canvasser who for the efficient administration of the tax must be regarded as the "agent" of the dealer under whom he operates. G.L. c. 64H, § 1(9)(d); G.L. c. 64I, § 1(1).

In this case, the property bought from Cabco is clearly purchased for use, storage or other consumption in Massachusetts. Thus a sales or use tax is due. Because Cabco has improperly failed to register as a vendor here, for the efficient administration of the tax, the Commissioner will regard Deacon as Cabco's agent "jointly responsible with his principal . . . for the collection and payment of the tax imposed by this chapter." G.L. c. 64H, § 1(9)(d); G.L. c. 64I, § 1(1). It does not matter that Deacon never had title to, nor possession of the property. As the agent of a vendor selling property subject to the sales or use tax, Deacon should ascertain that Cabco is collecting the tax due, or must itself collect the tax. The Commissioner need not seek payment of the tax from the individual purchasers of the goods. *National Geographic Society v. California State Board of Equalization*, 430 U.S. 551, 555 (1977).



**D  
O  
R  
  
D  
I  
R  
E  
C  
T  
I  
V  
E**

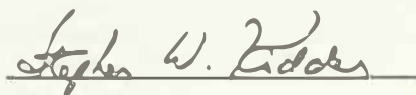
**DOR-D  
88-15**

D  
O  
R  
  
D  
I  
R  
E  
C  
T  
I  
V  
E

**DIRECTIVE:** Since Deacon acts for an unregistered out-of-state vendor doing business in the Commonwealth and making sales here which are subject to tax, Deacon should ascertain that Cabco is collecting the tax by reviewing invoices sent by Cabco for its products. If Cabco is not collecting the tax, Deacon must itself collect and pay over the sales or use tax on sales of the products it brokers for Cabco in Massachusetts.

**REFERENCE:** G.L. c. 64H, §§ 1(9)(d), 1(18), 2, 3; G.L. c. 64I, §§ 1(1), 2, 4; *National Geographic Society v. California State Board of Equalization*, 430 U.S. 551 (1977); *Towle v. Commissioner of Revenue*, 397 Mass. 599 (1986).

December 31, 1988



Stephen W. Kidder  
Commissioner of Revenue

DOR-D  
88-15

This Directive represents the official position of the Department of Revenue on the application of the law to the facts as stated. The Department and its personnel will follow this Directive, and taxpayers may rely upon it, unless it is revoked or modified pursuant to 830 CMR 62C.01(5)(e). In applying this Directive, however, the effect of subsequent legislation, regulations, court decisions, Directives, and TIRs must be considered, and Department personnel and taxpayers may rely upon this Directive only if the facts, circumstances and issues presented in other cases are substantially the same as those set forth in this Directive.